

CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

JEREMIAH W. (JAY) NIXON,
Attorney General of Missouri, *et al.*,
v. *Petitioners,*

SHRINK MISSOURI GOVERNMENT PAC,
ZEV DAVID FREDMAN and JOAN BRAY,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

JOINT APPENDIX

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NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They were reproduced in the Appendix to the Petition for Writ of Certiorari on the pages indicated below:

A. Opinion of the Court of Appeals	1a
B. Order of the Court of Appeals Issuing Injunction Pending Appeal	20a
C. Opinion of the District Court	24a

*United States District Court
Eastern District of Missouri*

DOCKET ENTRIES

March 2, 1998—Plaintiffs file complaint.

March 2, 1998—Plaintiffs moved for temporary restraining order and for preliminary injunction.

March 4, 1998—District court holds hearing on motion for temporary restraining order.

March 9, 1998—District Court denies motion for temporary restraining order.

March 27, 1998—Defendant Robert P. McCulloch moves to dismiss as an improper party pursuant to Fed. R. Civ. P. 21, or in the alternative to join as necessary and indispensable parties all prosecutors in the state of Missouri.

April 3, 1998—Defendants Richard Adams, Patricia Flood, Robert Gardner, Ervin Harder, John Howald, Elaine Spielbusch, and Jeremiah W. Nixon ("state defendants"; petitioners here) move for summary judgment.

April 3, 1998—State defendants file opposition to plaintiffs' motion for preliminary injunction.

April 3, 1998—State defendants file answer.

April 13, 1998—Plaintiffs file motion for summary judgment.

May 1, 1998—Joan Bray moves to intervene as a defendant.

May 12, 1998—District court grants state defendants' motion for summary judgment and enters judgment for defendants. District court also denies plaintiffs' motion for summary judgment and plaintiffs' motion for preliminary

injunction; denies as moot defendant McCulloch's motion to join as necessary and indispensable parties all prosecutors in the state of Missouri, his motion to dismiss McCulloch as an improper party, and Joan Bray's motion to intervene.

May 14, 1998—Plaintiffs file notice of appeal to the U.S. Court of Appeals for the Eighth Circuit of the May 12 judgment.

May 22, 1998—Joan Bray moves the district court for reconsideration of denial of motion to intervene.

June 5, 1998—Plaintiffs move district court for injunction pending appeal.

July 1, 1998—District court denies motion for injunction pending appeal. District court also grants Joan Bray's motion to reconsider and grants her motion to intervene as a defendant.

January 22, 1999—District court, on remand, enters summary judgment for plaintiffs and enters permanent injunction.

*United States Court of Appeals
for the Eighth Circuit*

DOCKET ENTRIES

May 21, 1998—Appeal docketed.

July 1, 1998—Plaintiffs move in the court of appeals for an injunction pending appeal.

July 10, 1998—Joan Bray moves for leave to intervene on behalf of appellees.

July 23, 1998—Court of appeals enters injunction pending appeal.

July 24, 1998—State defendants move for rehearing and suggest rehearing *en banc* of the injunction pending appeal.

July 30, 1998—State defendants apply to the circuit justice for a stay pending appeal.

July 31, 1998—Circuit justice denies application for stay pending appeal.

August 3, 1998—Joan Bray's motion for leave to intervene is granted by court of appeals.

August 10, 1998—State defendants move for hearing *en banc*.

August 20, 1998—Court of appeals denies state defendants' motion for rehearing, suggestion for rehearing *en banc*, and suggestion for initial *en banc* hearing.

August 21, 1998—Court of appeals hears argument.

November 30, 1998—Court of appeals issues opinion and judgment.

December 18, 1998—Notice from Supreme Court that state defendants filed a petition for writ of certiorari on December 11, 1998.

January 20, 1999—Court of appeals issues its mandate.

January 26, 1999—State defendants move in the court of appeals for recall of mandate and stay pending appeal.

January 28, 1999—Notice from Supreme Court that on January 25, 1999 it granted petition for writ of certiorari filed by state defendants.

February 9, 1999—Court of appeals denies state defendants' motion for recall of mandate and stay pending appeal.

February 12, 1999—State defendants move in the court of appeals for rehearing with suggestion for rehearing *en banc* of court's denial of motion for recall of mandate and stay pending appeal.

March 25, 1999—Court of appeals denies state defendants' motion for rehearing with suggestion for rehearing *en banc* of court's denial of motion for recall of mandate and stay pending appeal.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 4:98CV00357CEJ

SHRINK MISSOURI GOVERNMENT PAC,
a political action committee,
and ZEV DAVID FREDMAN,

Plaintiffs,

vs.

RICHARD ADAMS, in his official capacity as a Member of the MISSOURI ETHICS COMMISSION, PATRICIA FLOOD, in her official capacity as a Member of the MISSOURI ETHICS COMMISSION, ROBERT GARDNER, in his official capacity as a Member of the MISSOURI ETHICS COMMISSION, ERVIN HARDER, in his official capacity as a Member of the MISSOURI ETHICS COMMISSION, JOHN HOWALD, in his official capacity as Chairman of the MISSOURI ETHICS COMMISSION, ELAINE SPIELBUSCH, in her official capacity as a Member of the MISSOURI ETHICS COMMISSION, JEREMIAH W. NIXON, in his official capacity as MISSOURI ATTORNEY GENERAL, and ROBERT P. McCULLOUGH, in his official capacity as ST. LOUIS COUNTY PROSECUTING ATTORNEY,

Defendants.

COMPLAINT

Come now Plaintiffs, SHRINK MISSOURI GOVERNMENT PAC ("PAC") and ZEV DAVID FREDMAN ("FREDMAN") and for their cause of action herein against Defendants RICHARD ADAMS ("ADAMS"), PATRICIA FLOOD ("FLOOD"), ROBERT GARD-

NER ("GARDNER"), ERVIN HARDER ("HARDER"), JOHN HOWALD ("HOWALD"), ELAINE SPIELBUSCH ("SPIELBUSCH"), JEREMIAH W. NIXON ("NIXON"), and ROBERT P. McCULLOUGH ("McCULLOUGH") state:

Parties

1. Plaintiff FREDMAN is a resident and registered voter of the State of Missouri.
2. Plaintiff PAC is a political action committee, duly organized and existing under the laws of the State of Missouri, with its principal place of business within the metropolitan St. Louis, Missouri area.
3. Defendants ADAMS, FLOOD, GARDNER, HARDER, and SPIELBUSCH are members of the Missouri Ethics Commission ("Commission"), as established pursuant to the Mo. Stat. Ann. § 105.955 *et seq.* (1997 & Supp. 1998). Defendant HOWALD is Chairman of the Commission. The Chairman and the members of the Commission are sued in their official capacities.
4. Defendant NIXON is the Attorney General of the State of Missouri and is sued in his official capacity.
5. Defendant McCULLOUGH is the Prosecuting Attorney of St. Louis County and enforces Missouri criminal statutes, including Mo. Stat. Ann. § 130.081 (West 1997), and he is sued in his official capacity.
6. Defendant FLOOD is a resident of St. Louis County, Missouri. Defendant HOWALD is a resident of Jefferson County, and defendants ADAMS, GARDNER, HARDER, SPIELBUSCH, NIXON and McCULLOUGH reside in Missouri.

Jurisdiction and Venue

7. This court has jurisdiction over this action under 28 U.S.C. § 1331 and under 28 U.S.C. § 1343(a)(3) and (4). Plaintiffs bring this action under 42 U.S.C. § 1983, and they also seek relief under 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1988. Venue is properly within this judicial district and division pursuant to 28 U.S.C. § 1331(b)(1) and E.D. Mo. L.R. 2.07 because Defendants Flood and Howald are residents of this judicial district and division and because the other defendants all reside in Missouri.

Factual Statements

8. The State of Missouri in 1994 adopted two sets of amendments to the Missouri Campaign Finance Disclosure Law (Mo. Ann. Stat. §§ 130.011 *et seq.* (West 1997 & Supp. 1998)). On July 7, 1994, the legislature enacted a comprehensive statute, commonly known as Senate Bill 650, establishing restrictions on campaign contributions and expenditures and effective January 1, 1995. On November 8, 1994, the electorate approved an initiative, popularly known as Proposition A, imposing campaign finance limits and effective upon its passage.

9. On December 19, 1995, the United States Court of Appeals for the Eighth Circuit held that certain campaign spending limits established by Senate Bill 650 and by Proposition A violated the First Amendment. *Shrink Missouri Government PAC v. Maupin*, 71 F.3d 1422 (8th Cir. 1995), *cert. denied*, 116 S. Ct. 2579 (1996).

10. On December 19, 1995, the United States Court of Appeals for the Eighth Circuit held that Proposition A's \$100, \$200, and \$300 limits on campaign contributions violated the First Amendment. *Carver v. Nixon*,

72 F.3d 633 (8th Cir. 1995), *cert. denied*, 116 S. Ct. 2579 (1996).

11. After the invalidation of the contribution limits set by Proposition A, the limits imposed by Senate Bill 650, as amended by the legislature in 1997, became effective. *See Mo. Stat. Ann. § 130.032* (West Supp. 1998). Senate Bill 650 originally limited campaign contributions to candidates for office in Missouri on a sliding scale ranging from \$1000 to \$500 to \$250. *Id. § 130.032.1*. It also provides that these contribution limits "shall be increased" to take inflation into account. *Id. § 130.032.2*. On February 5, 1998, the Missouri Ethics Commission increased the contribution limits. Missouri Ethics Commission, Press Release (Feb. 5, 1998). The Missouri statute now prohibits contributions of more than \$1,075 for candidates for governor, lieutenant governor, secretary of state, state treasurer, state auditor, and attorney general, as well as for candidates in districts with a population of at least 250,000. *Mo. Stat. Ann. § 130.032.1(1), (6)* (West Supp. 1998). It prohibits contributions of more than \$525 for candidates for state senate and for candidates for any office in electoral districts with a population between 100,000 and 250,000. *Id. § 130.032.1(2), (5)* (West Supp. 1998). It prohibits contributions of more than \$275 for candidates for state representative or for offices in districts with a population of under 100,000. *Id. § 130.032.1(3), (4)* (West Supp. 1998).

12. These contribution limits apply both to contributors and to candidates and their committees. *Mo. Stat. Ann. §§ 130.032.1, 130.032.3* (West Supp. 1998). Contributors and candidates who violate these contribution limits are subject to criminal sanctions. *Mo. Stat. Ann. § 130.081* (West 1997). Committees, candidates, and both the treasurer and deputy treasurer of candidate com-

mittees are subject to substantial civil sanctions for violations of these contribution limits.

13. In the 1994 elections, Plaintiff PAC contributed \$1800 to candidates for Missouri elective office; it contributed \$250 in 1996; and it contributed \$2025 in 1997.

14. In support of Plaintiffs' Fredman's campaign for election to the office of state auditor, Plaintiff PAC contributed \$1025 to "Fredman for Auditor" on June 23, 1997, and it contributed an additional \$50 on February 25, 1998. Plaintiff PAC made these contributions to advance Fredman's political career, political opinions, and political policies and to advance the political viewpoints of its contributors. Plaintiff PAC would contribute more money to "Fredman for Auditor" in the 1998 primary election but for the sanctions imposed by Missouri law for making contributions in excess of \$1075 to candidates in the primary elections for state auditor. Plaintiff PAC would also make contributions to other candidates in excess of \$525 and \$275 limits but for the contribution limits imposed by the Missouri statutes.

15. Plaintiff Fredman, who has been a certified public accountant, is a candidate for the office of state auditor. Before March 31, 1998 as required by state law, he will file to run in the Republican primary on August 5, 1998 and pay the \$200 filing fee.

16. Plaintiff Fredman formed a candidate committee, "Fredman for Auditor," on June 17, 1997, and Russell Roberts is the Treasurer of this committee. This committee filed quarterly disclosure reports with the Missouri Ethics Commission on July 14, 1997, October 12, 1997, and January 9, 1998. This committee received a contribution of \$1025 from plaintiff PAC on June 23, 1997, and an additional contribution of \$50 on February 25, 1998. This

committee would accept additional contributions from Plaintiff PAC but for the sanctions imposed by Missouri law for receiving contributions in excess of \$1075 for candidates in the primary election for state auditor.

17. Plaintiff Fredman cannot run an effective primary campaign unless his committee can accept immediately contributions in excess of \$1075 from plaintiff PAC and other contributions. The \$1075 contribution limit is so low that he cannot amass the resources necessary to mount an effective campaign, and it severely burdens both his ability to deliver his political message and political dialogue on the issues to be raised in the campaign for state auditor.

Civil Rights Violations

18. The Missouri statutes limiting political campaign contributions, Mo. Stat. Ann. §§ 130.032.1, 130.032.2, 130.032.3, 130.032.7 (West. Supp. 1998) violate Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

19. These statutes currently cause Plaintiffs immediate and irreparable harm, and Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray this Court to enter judgment in their favor against Defendants, as follows:

A. By the entry of a temporary restraining order prohibiting Defendants, their successors, agents, and other persons acting in concert with them from implementing, enforcing, or acting in reliance upon the statutory provisions herein challenged;

B. By the entry of a preliminary injunction prohibiting Defendants, their successors, agents, and other persons acting in concert with them from implementing, enforcing, or

acting in reliance upon the statutory provisions herein challenged;

C. By the entry of a permanent injunction prohibiting Defendants, their successors, agents, and other persons acting in concert with them from implementing, enforcing, or acting in reliance upon the statutory provisions herein challenged;

D. By the entry of a declaratory judgment holding that the statutory provisions herein challenged violate Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution;

E. By the award of all attorneys' fees and costs to Plaintiffs, pursuant to 42 U.S.C. § 1998; and

F. By the entry of such other orders as the Court may deem appropriate and just under the circumstances.

D. BRUCE LA PIERRE

[Address omitted]

/s/ _____
PATRIC LESTER

[Address and verifications omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

[Caption Omitted]

**AFFIDAVIT OF PLAINTIFF ZEV DAVID FREDMAN
IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Comes now Affiant, Zev David Fredman, and states:

1. I am a named Plaintiff in the above entitled cause.
2. I am a registered voter and resident of St. Louis County, Missouri.
3. I am an active candidate in the 1998 Republican Party primary for the office of Missouri State Auditor, and, I intend to file, as required by state law before March 31, 1998, to run in the Republican primary on August 5, 1998 and to pay the \$200 filing fee.
4. The statutes challenged in this cause prevent me from marshaling sufficient assets to conduct a meaningful statewide campaign for the office of Missouri State Auditor and from expressing my political opinions to the Missouri electorate, and they severely burden political dialogue on the issues raised in the campaign for Missouri State Auditor.
5. I have now a special opportunity to participate successfully in the Republican primary for state auditor. Margaret Kelly, a Republican and the incumbent Auditor, has decided not to run for re-election, and another formidable opponent, Republican State Senator Peter Kinder (Cape

Girardeau) has also decided against participating in the primary election. My window of opportunity, however, is small. Kelly proposed Charles Pierce, a CPA and a seventeen year employee of the Auditor's office, at the Lincoln Days gathering of the Missouri Republican Party over Presidents' Day weekend, February 14-15, 1998. Moreover, many other candidates with statewide ambitions will consider running for state auditor because it is one of only two statewide elections in 1998.

6. I need a large amount of seed money immediately in order to present my candidacy to voters who are likely participants in the Republican primary and to make it more difficult for other candidates to attract these voters. Pierce is a first-time candidate for statewide political office, and, if I can act promptly, I will be able to compete with him on an equal footing.

7. If I raise a significant amount of seed money quickly, I will be able to use it to raise additional funds for my statewide campaign, to promote my candidacy to party insiders, and to gain an advantage in the primary race. Party leaders consider candidates with money more seriously than candidates who have few resources, and acceptance by party leaders is a key to success in primaries. I must raise substantial sums immediately in order to present my candidacy to Republican Party leaders who are in the process of anointing another candidate, Charles Pierce, and to discourage other potential candidates from entering the primary.

8. The 1998 Republican primary for State Auditor will be very expensive. For example, the Missouri Ethics Commission reported that Margaret Kelly, the Republican candidate for State Auditor in the uncontested August 1994 Republican primary election for State Auditor, spent a total of \$135,136.

9. I am not a professional politician. I am a first-time candidate for statewide political office, and I do not have either a vast network of political contacts or a well-established base of contributors. Instead, I am a private businessman, and I must continue to manage my business while I mount my campaign for State Auditor. I do not have time to raise the seed money necessary for my statewide campaign by asking a large number of contributors for small contributions. I must, instead, depend on contributions of more than \$1075 made by plaintiff PAC and others.

10. The campaign for the Republican nomination for the office of State Auditor has already begun. I need immediately to an additional contribution from Plaintiff PAC in order to raise the seed money necessary to mount an appeal to other potential contributors and to advance my candidacy to Republican Party leaders who are now considering Charles Pierce and other potential candidates.

/s/ _____
 ZEV DAVID FREDMAN
 Affiant

[Dated March 2, 1998; Jurat Omitted]

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF MISSOURI

[Caption Omitted]

**AFFIDAVIT OF RUSSELL ROBERTS
 IN SUPPORT OF PLAINTIFFS' MOTION FOR
 TEMPORARY RESTRAINING ORDER
 AND PRELIMINARY INJUNCTION**

Comes now Affiant, Russell Roberts, and states:

1. I am Treasurer of "Fredman for Auditor," a candidate committee.
2. As Treasurer of this committee, I accepted a contribution of \$1025 from Shrink Missouri Government PAC on June 23, 1997, and I accepted another contribution of \$50 from Shrink Missouri Government PAC on February 25, 1998.
3. As Treasurer of "Fredman for Auditor," I would accept an additional contribution from Shrink Missouri Government PC but for the sanctions imposed by Missouri law, Mo. Stat. Ann. §§ 130.032.1, 130.032.3, 130.032.7, 130.081 (West 1997 & Supp. 1998), for accepting contributions in excess of \$1075 for candidates in the primary election for state auditor.

/s/ _____
 RUSSELL ROBERTS
 Affiant

[Dated March 2, 1998; Jurat Omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

[Caption Omitted]

**AFFIDAVIT OF PLAINTIFF SHRINK
MISSOURI GOVERNMENT PAC,
A POLITICAL ACTION COMMITTEE,
IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Comes now Affiant, Shrink Missouri Government PAC, a political action committee, by and through its Treasurer, and states:

1. It is a political action committee, duly organized and existing under the laws of the State of Missouri, with its principal place of business within the metropolitan St. Louis area.
2. During the 1994, 1996, and 1997 elections, it made contributions to candidates for Missouri elective office, and it continues in operation for the purpose of making similar contributions in the future.
3. Shrink Missouri Government PAC made a contribution of \$1025 to "Fredman for Auditor," a candidate committee, on June 23, 1997, and it contributed an additional \$50 on February 25, 1998.
4. Shrink Missouri Government PAC intends to make another contribution to "Fredman for Auditor," but this additional contribution is prohibited by Mo. Ann. Stat. §§ 130.032.1(1), 130.032.3, 130.032.7, 130.081 (West 1997 & Supp. 1998).

5. Shrink Missouri Government PAC is a conduit between contributors to political campaigns and candidates who, in the opinion of the Treasurer and other leaders of the PAC, support the political viewpoints and goals of the PAC and the contributors. Many individuals contribute to the PAC because they rely on the Treasurer and other PAC leaders to investigate and evaluate candidates. Many PACs operate in the same fashion as Shrink Missouri Government PAC.

6. Shrink Missouri Government PAC, its Treasurer, and other leaders believe that Zev David Fredman's candidacy for State Auditor promotes the political viewpoints and goals of the PAC and its contributors.

7. The PAC would contribute more than \$1075 to Mr. Fredman but for the contribution limits of Mo. Stat. Ann. §§ 130.032.1, 130.032.3, 130.032.7 (West Supp. 1998), and these limits severely burden the PAC's ability to promote its political viewpoints and goals to express support for candidates through campaign contributions. The PAC would also make contributions to other candidates in excess of \$525 and \$275 limits but for the contribution limits of the Missouri statutes.

8. The burden on the PAC is severe because Mr. Fredman needs seed money immediately in order to compete effectively in the Republican primary campaign and because his ability to attract other contributions is a function of his ability to raise seed money.

9. The contribution limits are so low that they prevent Mr. Fredman from amassing resources necessary for effective political advocacy, and, if the primary candidacy of Mr. Fredman fails, the PAC and its contributors may be left without a candidate in the November 1998 general election who will advocate their political viewpoints and goals.

SHRINK MISSOURI GOVERNMENT PAC

By /s/ _____
W. BEVIS SCHOCK
 President

[Dated March 2, 1998; Jurat Omitted]

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF MISSOURI

 [Caption Omitted]

ANSWER OF DEFENDANTS
ADAMS, FLOOD, GARDNER, HARDER,
HOWALD, SPIELBUSCH, AND NIXON

The above-named defendants answer the numbered paragraphs of the plaintiffs' complaint as follows:

1. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1; thus those allegations are denied.
2. The defendants admit that plaintiff PAC is registered with the Missouri Ethics Commission as a continuing committee. Otherwise, the defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2; thus those allegations are denied.
3. The defendants admit that defendants Adams, Flood, Gardner and Spielbusch are members of the Missouri Ethics Commission. Defendants deny that defendant Harder is a member of the Missouri Ethics Commission and that defendant Howald is the chairman of the Missouri Ethics Commission, on grounds that the terms of Harder and Howald on the Missouri Ethics Commission expired on March 15, 1998.
4. Admitted.
5. Admitted.

6. These defendants deny that for purposes of venue any of them reside in St. Louis County, Jefferson County, or any other county in the Eastern District of Missouri. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation regarding defendant McCullough's residency; thus that allegation is denied.

7. The first sentence of this paragraph consists of contentions of law that do not require an answer. The second sentence consists of the plaintiffs' characterization of their complaint, which does not require an answer. As to the third sentence, these defendants deny that defendants Flood and Howald, having been sued in their official capacities, are residents of this judicial district and division for purposes of establishing venue. The defendants admit that all defendants reside in Missouri. Otherwise, the third sentence consists of contentions of law that do not require an answer. To the extent that the plaintiffs' contentions of law and characterization contained in paragraph 7 require an answer, the defendants deny those allegations.

8. The defendants admit that legislation amending Chapter 130, RSMo., was adopted by the 1994 Missouri General Assembly as Senate Bill 650, and by the people of Missouri by initiative on November 8, 1994. Otherwise this paragraph consists of the plaintiffs' characterization of those amendments. The defendants neither admit nor deny that characterization, but refer the Court to the amendments themselves. Otherwise any allegations in paragraph 8 are denied.

9. The defendants admit that the court of appeals issued an opinion in *Shrink Missouri Government PAC v. Maupin*, 71 F.3d 1422 (8th Cir. 1995), *cert. denied*, 116 S. Ct. 2579 (1996). Otherwise this paragraph con-

sists of the plaintiffs' characterization of that decision. The defendants neither admit nor deny that characterization, but refer the Court to the decision itself.

10. The defendants admit that the court of appeals issued an opinion in *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995), *cert. denied*, 116 S. Ct. 2579 (1996). Otherwise this paragraph consists of the plaintiffs' characterization of that decision. The defendants neither admit nor deny that characterization, but refer the Court to the decision itself.

11. The defendants admit the allegations of the fourth sentence of this paragraph. Otherwise, this paragraph consists of contentions of law that do not require an answer. To the extent an answer is required, the defendants deny the remaining allegations of paragraph 11.

12. This paragraph consists of contentions of law that do not require an answer. To the extent an answer is required, the defendants deny the allegations of paragraph 12.

13. The defendants admit that the only contributions reported by plaintiff PAC in 1994, 1995, 1996, 1997, and 1998 total the amounts stated. Otherwise the defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13; thus those allegations are denied.

14. The defendants admit that reports filed by plaintiff Fredman and plaintiff PAC for the quarter including June 23, 1997, show a contribution of \$1025 from PAC to Fredman. Otherwise the defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13; thus those allegations are denied.

15. The defendants admit that before March 31, 1998, plaintiff Fredman filed with the Missouri Secretary of State as a candidate for Auditor. The defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 15; thus those allegations are denied.

16. The defendants admit that reports filed by plaintiff Fredman show that he formed a candidate committee, "Fredman for Auditor." Those reports also name Russell Roberts as treasurer of the committee. The defendants admit the allegations of the second sentence of this paragraph. The defendants also admit that the report for the second quarter of 1997 shows a \$1025 contribution from PAC to Fredman, and that those reports show no other contributions to plaintiff Fredman by anyone during 1997. Otherwise the defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16; thus those allegations are denied.

17. Denied.

18. This paragraph consists of contentions of law that do not require an answer. To the extent an answer is required, the defendants deny the allegations of paragraph 18.

19. Denied.

Wherefore, the above-named defendants pray that this Court deny the relief sought; dismiss plaintiffs' complaint; grant the costs herein expended by defendants; and for such other relief as the Court deems just and proper.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

/s/

JAMES R. LAYTON
Chief Deputy Attorney General

PAUL MAGUFFEE
MARY ERICKSON
Assistant Attorneys General

[Address and Certificate of Service Omitted]

Campaign Finance Data from Recent Elections

Data as reported by the Federal Election Commission
and the Missouri Ethics Commission, based on
candidate filings

Governor '92	Primary	General	Total
D—Daprin	\$60,509.73		
D—Schoeml	\$2,371,794.93		
D—Rogers	\$5,504.50		
D—Carnahan	\$1,404,503.74	\$2,430,054.48	\$3,834,558.22
D—Subtotal	\$3,842,312.90		
R—Webster	\$3,279,009.00	\$1,848,816.13	\$5,127,825.13
R—Blount	\$2,015,206.00		
R—Bailey	\$348,945.05		
R—Watts	\$6,970.00		
R—Subtotal	\$5,650,130.05		
Totals	\$9,492,442.95	\$4,278,870.61	\$8,962,383.35
	Total		\$13,771,313.56
	Avg candidate		\$1,721,414.19
	Avg for candidates not in statewide office		\$611,164.79
	\$2,000 as a percentage of the major party candidates' total expenditures		0.02%
Governor '96	Primary	General	Total
D—Carnahan	\$630,873.11	\$2,571,288.42	\$3,202,161.53
R—Kelly	\$244,880.26	\$653,671.32	\$898,551.58
Totals	\$875,753.37	\$3,224,959.74	\$4,100,713.11
	Total		\$4,100,713.11
	Avg candidate		\$2,050,356.56
	\$2050 as a percentage of the major party candidates' total expenditures		0.05%

Lt Gov '92	Primary	General	Total
D—Wilson	\$497,985.29	\$621,715.23	\$1,119,700.52
D—Ross	\$8,206.60		
D—Rice	\$67,859.12		
D—Pisani	\$231,413.20		
D—Subtotal	\$805,464.21		
R—Kelly	\$157,371.02	\$386,331.88	\$543,702.90
R—Stubblefield	\$3,183.99		
R—Subtotal	\$160,555.01		
Totals	\$966,019.22	\$1,008,047.11	\$1,663,403.42
	Total		\$1,974,066.33
	Avg Candidate		\$329,011.06
	Avg candidate not in statewide		\$286,072.66
	\$2000 as a percentage of the major party candidates' total expenditures		0.10%
Lt Gov '96	Primary	General	Total
D—Wilson	\$122,400.85	\$984,729.16	\$1,107,130.01
R—Kenney	\$102,165.14	\$793,143.00	\$895,308.14
Totals	\$224,565.99	\$1,777,872.16	\$2,002,438.15
	Total		\$2,002,438.15
	Avg Candidate		\$1,001,219.08
	Avg candidate not already statewide		\$895,308.14
	\$2050 as a percentage of the major party candidates' total expenditures		0.10%

Sec State '92	Primary	General	Total
D—Moriarty	\$21,092.54	\$127,732.69	\$148,825.23
D—Wagner	\$144,314.00		
D—Quinn	\$50,431.74		
D—Subtotal	\$215,838.28		
R—Hancock	\$61,778.95	\$188,429.27	\$250,208.22
R—Kilby	\$108,244.04		
R—Parker	\$50,564.43		
R—Strickoff	\$52,970.34		
R—Subtotal	\$114,749.29		
Totals	\$330,587.57	\$316,161.96	\$399,033.45
	Total	\$646,749.53	
	Avg Candidate	\$92,392.79	
	Avg candidate not in statewide	\$92,392.79	

\$2000 as a percentage of the major party candidates' total expenditures 0.50%

Sec State '96	Primary	General	Total
D—Cook	\$182,493.50	\$927,372.79	\$1,109,866.29
D—Askew	\$4,503.00		
D—Subtotal	\$186,996.50		
R—Hancock	\$55,557.53	\$649,098.87	\$704,656.40
Totals	\$242,554.03	\$1,576,471.66	\$1,814,522.69
	Total	\$1,819,025.69	
	Avg Candidate	\$606,341.90	
	Avg candidate not previously run statewide	\$557,184.65	
	Avg candidate not in statewide	\$354,579.70	

\$1025 as a percentage of the major party candidates' total expenditures 0.11%

Treasurer '92	Primary	General	Total
D—Holden	\$372,123.99	\$165,754.44	\$537,878.43
D—La Page	\$425,742.41		
D—Welch	\$56,030.01		
D—Subtotal	\$853,896.41		
R—Melton	\$33,574.81	\$27,334.09	\$60,908.90
R—Holloway	\$11,020.51		
R—Subtotal	\$44,595.32		
Totals	\$898,491.72	\$193,088.53	\$598,787.33
	Total		\$1,091,580.26
	Avg Candidate		\$218,316.05
	Avg candidate not in statewide		\$218,316.05
			\$2000 as a percentage of the major party candidates' total expenditures 0.33%

Treasurer '96	Primary	General	Total
D—Holden	\$92,062.17	\$326,843.88	\$418,906.05
R—Bearden	\$11,735.59	\$38,642.47	\$50,378.06
Totals	\$103,797.76	\$365,486.35	\$469,284.11
	Total		\$469,284.11
	Avg Candidate		\$234,642.06
	Avg candidate not in statewide		\$50,378.06
			\$2050 as a percentage of the major party candidates' total expenditures 4.07%

AG '92	Primary	General	Total
D—Nixon	\$520,120.18	\$774,349.22	\$1,294,469.40
D—Wolf	\$286,580.67		
D—Quitno	\$362,601.69		
D—Reardon	\$100,652.40		
D—Subtotal	\$1,269,954.94		
R—Steelman	\$629,633.16	\$779,544.34	\$1,409,177.50
R—Hall	\$662,039.80		
R—Subtotal	\$1,291,672.96		
Totals	\$2,561,627.90	\$1,553,893.56	\$2,703,646.90
	Total	\$4,115,521.46	
	Avg Candidate	\$685,920.24	
	Avg candidate not in statewide	\$685,920.24	
\$2000 as a percentage of the major party candidates' total expenditures		0.05%	

AG '96	Primary	General	Total
D—Nixon	\$132,083.25	\$598,452.74	\$730,530.99
R—Bredemeier	\$46,531.85	\$168,554.47	\$215,086.32
Totals	\$178,615.10	\$767,007.21	\$945,622.31
	Total	\$945,622.31	
	Avg Candidate	\$472,811.15	
	Avg candidate not in statewide	\$215,086.32	
\$2050 as a percentage of the major party candidates' total expenditures		0.21%	

Samples of Recent U.S. Senate and House Races Outside Missouri

Race	Reason for selection	Total spent by major party candidates	percentage of average amount spent
House-Wyoming-1996	Smallest constituency (481,000)	\$949,987.00	0.4211%
Senate-Wyoming-1996	same	\$2,183,516.00	0.1832%
Senate-Wyoming-1994	same	\$1,781,326.00	0.2246%
Senate-California-1994	Largest constituency (31,362,000)	\$44,376,874.00	0.0090%
House-Georgia-1996	Most expensive 1994 House race	\$6,852,466.00	0.0584%
House-Missouri-1996	Second most expensive House race	\$2,658,373.00	0.1505%
Senate-North Carolina-1996	Most expensive Senate race	\$19,677,060.00	0.0203%

Recent U.S. Senate and House Races in Missouri

	Republican	Democrat	Total	\$2000 as a percentage of average amount spent
Senate 1994 (Ashcroft)	\$4,063,927.00	\$3,505,701.00	\$7,569,628.00	0.0528%
Senate 1992 (Bond)	\$5,022,431.00	\$1,112,187.00	\$6,134,618.00	0.0652%
House 1996-Hulshoff	\$686,450.00	\$542,368.00	\$1,228,818.00	0.3255%
Emerson	\$806,205.00	\$831,533.00	\$1,637,738.00	0.2442%
Blunt	\$985,764.00	\$103,747.00	\$1,089,511.00	0.3671%
Danner	\$112,970.00	\$0.00	\$112,970.00	3.5408%
McCarthy	\$220,339.00	\$0.00	\$220,339.00	1.8154%
Skelton	\$770,607.00	\$316,989.00	\$1,087,596.00	0.3678%
Gephart	\$3,110,509.00	\$62,504.00	\$3,173,013.00	0.1261%
Talent	\$1,165,814.00	\$381,873.00	\$1,547,687.00	0.2585%
Clay	\$383,850.00	\$77,978.00	\$461,828.00	0.8661%

Average Congressional Spending and Comparison to
Contribution Limits For Recent Elections

Campaign	Number of Candidates	Total Net Disbursements	Average Disbursements per Candidate	\$2,000 as % of Avg. Disb.
1991/92 Election Cycle: House General Election Campaigns	1,300	\$332,689,465	\$255,915	0.782%
1991/92 Election Cycle: Senate General Election Campaigns	146	\$195,901,342	\$1,341,790	0.149%
1993/94 Election Cycle: House General Election Campaigns	1,108	\$343,842,612	\$310,327	0.644%
1993/94 Election Cycle: Senate General Election Campaigns	139	\$272,466,906	\$1,960,194	0.102%
1995/96 Election Cycle: House General Election Campaigns	4	\$424,803,698	\$306,939	0.652%
1995/96 Election Cycle: Senate General Election Campaigns	143	\$226,012,457	\$1,580,507	0.127%

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

[Caption Omitted]

AFFIDAVIT

Affiant, Joseph A. Carroll, states as follows:

1. I am a Senior Field Investigator with the Missouri Ethics Commission. My duties include review and auditing of campaign finance reports that are filed with the Missouri Ethics Commission. I supervise other staff members of the Missouri Ethics Commission who share responsibilities for reviewing and auditing campaign finance reports that are filed with the Missouri Ethics Commission.
2. I have knowledge of the following facts and would testify to them as true.
3. My staff and I have reviewed the campaign finance reports filed with the Missouri Ethics Commission by candidates for statewide offices in the elections held in 1996 and we have tabulated the total expenditures reported by those candidates for those elections.
4. The list attached to this Affidavit as Exhibit A presents the results of our review and tabulation and, to the best of my knowledge and information, presents the total expenditures reported to the Missouri Ethics Commission by candidates for statewide offices in elections held in 1996.

/s/ _____
JOSEPH A. CARROLL

[Dated March 4, 1998; Jurat Omitted]

1996 PRIMARY ELECTION

GOVERNOR

Edwin W. Howald (D)
exemption filed
 Mel Carnahan (D)
\$630,873.11

Ruth Redel (D) *exemption filed*
 Nicholas Clement (D)
exemption filed
 John M. Swenson (R)
exemption filed
 Margaret Kelly (R)
\$244,880.26

David Andrew Brown (R)
exemption filed
 Lester W. (Les) Duggan, Jr. (R)
exemption filed

J. Mark Oglesby (L) *\$3,826.26*

Martin Lindstedt (L)
exemption filed

LIEUTENANT GOVERNOR

Roger B. Wilson (D)
\$122,400.85
 Bill Kenney (R) *\$102,165.14*
 Jeanne Bojarski (L)
exemption filed

SECRETARY OF STATE

James J. Askew (D) *\$4,503.00*
 V. Marvalene Pankey (D)
exemption filed
 Rebecca McDowell (Bekki)
 Cook (D) *\$182,493.50*
 John Hancock (R) *\$55,557.53*
 LaDonna Higgins (L)
exemption filed

STATE TREASURER

Bob Holden (D) *\$92,062.17*
 Carl Bearden (R) *\$11,735.59*
 Jaques Tucker (L)
exemption filed

1996 GENERAL ELECTION

Mel Carnahan (D) *\$2,571,228.42*

Margaret Kelly (R) *\$653,671.32*

J. Mark Oglesby (L) *\$3,767.40*

Roger B. Wilson (D) *\$984,729.16*

Bill Kenney (R) *\$793,143.18*
 Jeanne Bojarski (L) *\$792.52*

R.M. (Bekki) Cook (D)
\$927,372.79
 John Hancock (R) *\$649,098.87*
 LaDonna Higgins (L)
exemption filed

Bob Holden (D) *\$326,843.88*
 Carl Bearden (R) *\$38,642.47*
 Jaques Tucker (L)
exemption filed
 David Young (T)
exemption filed

ATTORNEY GENERAL

Jeremiah W. (Jay) Nixon (D)	J. W. (Jay) Nixon (D)
<i>\$132,083.25</i>	<i>\$598,452.74</i>
Mark Bredemeier (R)	Mark Bredemeier (R)
<i>\$46,531.85</i>	<i>\$168,554.47</i>
Kimberly Lowe (T)	
<i>exemption filed</i>	

[Exhibit A]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

[Caption Omitted]

AFFIDAVIT

Before me, the undersigned authority, personally appeared Evelyn Lietzow who first being duly sworn on her oath states:

1. I am employed as a legal assistant with the Missouri Office of Attorney General.
2. I obtained from public records maintained by the Missouri Ethics Commission photocopies of all campaign finance disclosure reports filed by candidates for Secretary of State in the 1992 elections and candidates for Auditor in the 1994 elections. These reports total several hundred pages.
3. I reviewed every report of each candidate for Secretary of State who ran in the 1992 general election and, for each candidate, I listed which named contributors gave aggregate contributions of \$2,000 or less and which named contributors gave aggregate contributions of more than \$2,000. I excluded contributors identified as political party committees for a state, county, district, city, or other area. For each candidate, I then added the total number of named contributors, the number of named contributors who made aggregate contributions of \$2,000 or less, and the number of named contributors who made aggregate contributions of more than \$2,000.
4. I found that candidates for Secretary of State who ran in the 1992 general election listed 669 named con-

tributors, 659 of which made aggregate contributions of \$2,000 or less, and 10 of which made aggregate contributions of more than \$2,000. Accordingly, 98.51% of the contributors made aggregate contributions of \$2,000 or less and 1.49% of the contributors made aggregate contributions of more than \$2,000.

5. In addition to amounts of contributions from named contributors, the reports I reviewed for Secretary of State candidates reported amounts of non-itemized contributions, which were totals of individual contributions of less than \$100 and were not attributed to named contributors. I listed and totaled the amounts of non-itemized contributions reported on all reports filed by candidates for Secretary of State who ran in the 1992 general election. The total amount of such non-itemized contributions was \$72,372.

6. In addition, the reports I reviewed for Secretary of State candidates reported amounts of contributions received through fundraisers, which were not attributed to named contributors. I listed and totaled the amounts of fundraiser contributions reported on all reports filed by candidates for Secretary of State who ran in the 1992 general election. The total amount of such fundraiser contributions was \$49,547.

7. I reviewed every report of each candidate for Auditor who ran in the 1994 general election and, for each candidate, I listed which contributors gave aggregate contributions of \$2,000 or less and which contributors gave aggregate contributions of more than \$2,000. I excluded contributors identified as political party committees for a state, county, district, city, or other area. For each candidate, I then added the total number of contributors, the number of contributors who made aggregate contributions of \$2,000 or less, and the number of con-

tributors who made aggregate contributions of more than \$2,000.

8. I found that candidates for Auditor who ran in the 1994 general election listed 1,973 contributors, 1,926 of which made aggregate contributions of \$2,000 or less, and 47 of which made aggregate contributions of more than \$2,000. Accordingly, 97.62% of the contributors made aggregate contributions of \$2,000 or less and 2.38% of the contributors made aggregate contributions of more than \$2,000.

9. In addition to amounts of contributions from named contributors, the reports I reviewed for Auditor candidates reported amounts of non-itemized contributions, which were totals of individual contributions of less than \$100 and were not attributed to named contributors. I listed and totaled the amounts of non-itemized contributions reported on all reports filed by candidates for Auditor who ran in the 1994 primary and general elections. The total amount of such non-itemized contributions was \$123,648.

10. In addition, the reports I reviewed for Auditor candidates reported amounts of contributions received through fundraisers, which were not attributed to named contributors. I listed and totaled the amounts of fundraiser contributions reported on all reports filed by candidates for Auditor who ran in the 1994 primary and general elections. The total amount of such fundraiser contributions was \$82,470.

/s/ _____
EVELYN LIETZOW

[Dated April 3, 1998; Jurat Omitted]

STATE OF MISSOURI
MISSOURI ETHICS COMMISSION
P. O. BOX 1254
JEFFERSON CITY, MISSOURI 65102

January 30, 1998

NEWS RELEASE

Mr. John Howald, Chairman of the Missouri Ethics Commission announced today new contribution limits for those candidates running for elected office. Mr. Howald stated the new limits are:

\$1,075.00 State-wide office candidates, and candidates running for an office in a district, ward, or other unit, with a population of over 250,000 people;

\$525.00 State Senate candidates, and candidates running for office in a district, ward, or other unit, with a population of 100,000 to 250,000 people;

\$275.00 State House of Representatives candidates and candidates running in a district, ward, or other unit, with a population less than 100,000.

Mr. Howald further stated the Missouri Ethics Commission must review the contribution limits every two years and adjust those limits to reflect the growth in the Consumer Price Index. The Commission last reviewed the contribution limits in 1996. The new limits become effective January, 1998 and will remain in effect until 2000. Mr. Howald urged those persons with questions concerning contribution limits to contact the Missouri Ethics Commission at 1/800-392-8660.

[Caption Omitted]

**AFFIDAVIT OF PLAINTIFF ZEV DAVID FREDMAN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

Comes now Affiant, Zev David Fredman, and states:

1. I am a candidate for Missouri Auditor in the 1998 Republican primary. I have formed a candidate committee, filed for office, and paid the filing fee.
2. In the past I have made contributions to candidates and groups (including Shrink Missouri Government Foundation) that had views consistent with my own, but, until recently, I did not believe that the time was ripe to run for office.
3. In the spring of 1997, at the suggestion of W. Bevis Schock, I began to consider running for the office of Missouri State Auditor.
4. Schock told me that Shrink Missouri Government PAC would make the maximum legal contribution to my candidate committee and that it would like to make a larger contribution.
5. Schock also told me that, if necessary in its judgment, Shrink Missouri Government PAC would consider raising a First Amendment challenge to the Missouri campaign contribution limits.
6. I believe that I can wage an effective campaign for Auditor if I can raise funds in increments of more than \$1075, and I have friends who I believe would make such contributions if they were legal. Thus, I believe that the success of my candidacy will be determined in part by the outcome of this case. My participation in this lawsuit is consistent with my views that state regulations, including campaign finance regulations, must be reduced.

7. I am in the race to win, but I also know that merely by filing I will have an opportunity in public forums and in the media to make my views known. Therefore, I believe that my candidacy regardless of the ultimate outcome will promote my political ideas.

/s/ _____
ZEV DAVID FREDMAN
Affiant

[Dated April 13, 1998; Jurat Omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

[Caption Omitted]

**AFFIDAVIT OF PLAINTIFF SHRINK
MISSOURI GOVERNMENT PAC,
A POLITICAL ACTION COMMITTEE,
IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

Comes now Affiant, Shrink Missouri Government PAC, a political action committee, by and through its Treasurer, and states:

1. Shrink Missouri Government PAC (the PAC) is a Missouri Political Action Committee, and it is duly registered as a continuing committee with the Missouri Ethics Commission and is in good standing.
2. Shrink Missouri Government PAC has been active in the Missouri political system from the early to mid-1990's, and it has participated more actively in some elections than others.
3. Andy Rothweiler, the owner of a successful temporary service firm (ProTemps), George Schoedinger, an orthopedic surgeon, and Bruce Schlafly, an orthopedic surgeon specializing in hand surgery, are some of the individuals who are actively involved in PAC.
4. W. Bevis Schock is the sole officer of the PAC, and Schock, in consultation with Rothweiler, Schoedinger, Schlafly and others, has taken a leadership role.
5. The title of the PAC states its goal: To Shrink Missouri Government.

6. The PAC tries to achieve its objective primarily by raising money from citizens and making contributions to candidates who it believes will, if elected, try to shrink Missouri's government.

7. When the PAC forms a good faith belief that a campaign finance law unconstitutionally impedes its ability to take the political actions that it desires to take, the PAC will assert its First Amendment rights in litigation.

8. The PAC believes that First Amendment litigation challenging state campaign finance regulations is entirely consistent with its overall objective of shrinking Missouri's government and regulatory apparatus.

9. Throughout the history of the PAC, Schock and others have held occasional strategy meetings to discuss political issues and to decide which candidates to back and which candidates to shun.

10. The PAC has frequently addressed the problem of ensuring that the candidates who receive contributions will in fact pursue the objective of shrinking Missouri government, and in 1994 the PAC gave money only to candidates who returned a form and identified the state governmental program(s) that they would work to eliminate if they were elected.

11. Schock and others decided that forming a PAC is preferable to identifying candidates who support its political objectives and encouraging donors to give directly to those candidates because making contributions through the conduit of a PAC with a Strong name like Shrink Missouri Government effectively communicates the PAC's objectives and makes it a significant participant in the political process.

12. The PAC has frequently addressed the question how it can grow and become stronger given the pressures

of time and the difficulty of raising money. Although it has never successfully answered this question, obtaining donations in larger amounts would both ease time pressures and possibly increase the PAC's influence.

13. The PAC has generally supported Republican candidates, on the theory that in the long run the Republican party is more likely to try to shrink Missouri government than the Democrat party.

14. In the 1996 statewide elections, Margaret Kelly was the Republican candidate for governor, but the PAC did not make a contribution to her campaign because it believed that Ms. Kelly would not act in a manner completely consistent with the PAC's objective. The PAC concluded from its perspective that her campaign effort was a disaster, that she failed to campaign aggressively, and that she utterly failed to promote its objective of shrinking Missouri government.

15. In 1996 the Republicans, including Kelly, lost every statewide race, and the PAC decided that it would like to find a candidate who would run in 1998 for Auditor, the only 1998 non-federal statewide race.

16. The PAC did not know whether Ms. Kelly would run for reelection as Auditor, and as it considered its options, Zev Fredman came to mind. Mr. Fredman had previously contributed to Shrink Missouri Government Foundation, a related organization, and the PAC believed that he supported "Shrink's" objectives and that he had the proper accounting background to serve as Auditor.

17. Schock, as a citizen and as Treasurer of the PAC, approached Fredman about running for Auditor of the State of Missouri.

18. In discussions about his candidacy, the PAC stated that it would like to give him more than \$1000 (now \$1075), but that in order to make a contribution in this amount the PAC might have to participate in a First Amendment challenge to Missouri's campaign finance laws.

19. Mr. Fredman expressed interest in running for State Auditor, and he formed his campaign committee with the PAC's help. The PAC gave him the maximum contribution it could under the law. Mr. Fredman decided to run because he wants to be Auditor, and he recognized that he might have to participate in a First Amendment challenge to Missouri's campaign finance regulations in order to advance his candidacy.

20. After Fredman formed his candidate committee and after the PAC made its initial contribution to Fredman, the PAC learned that Peter Kinder, a Missouri State Senator from Cape Girardeau, was considering a run for State Auditor. Kinder has no accounting background, but he is extremely well-respected in Republican circles, and he also has a voting record consistent with the PAC's objectives. When Kinder first mentioned running, the PAC viewed him as a threat to Mr. Fredman, and, if his campaign had become serious, the PAC might have shifted its support to Mr. Kinder. The PAC did not have to reach a decision because Mr. Kinder dropped out of the race.

21. At the February 1998 state Republican meeting, known as Lincoln Days, Margaret Kelly encouraged Republican leaders to support her assistant, Mr. Charles Pierce, in a bid for Auditor. Many Republican leaders have now given Mr. Pierce their support.

22. Shrink Missouri Government PAC believes that Mr. Pierce is likely to be "Margaret Kelly all over again," and it continues to support Mr. Fredman.

23. Even though Mr. Pierce may have a better chance of winning, Mr. Fredman will have opportunities in the course of his campaign to express his views at public forums and in the media. The PAC expects that Mr. Fredman will express political views that are completely consistent with the PAC's objectives. Moreover, Mr. Fredman's candidacy may catch fire with the voters, and any number of other events could well lead to Fredman's election as Auditor in November 1998.

24. Mr. Fredman needs more money to move his campaign forward more aggressively, and the more money he raises, the more money he will be able to raise.

25. The PAC believes that Mr. Fredman should solicit money and support from party leaders, but he needs more money in order to obtain the appropriate mailing lists, to print his literature, and to mail it.

26. Shrink Missouri Government PAC would like to give Mr. Fredman more money than \$1075 that it has already contributed to his campaign.

27. Schock has historically been the Shrink Missouri Government PAC representative who makes phone calls to solicit contributions to the PAC, and he had raised funds as needed for particular candidates and not on an on-going basis.

28. Shock has not yet engaged in fund raising for the PAC in order to give money to Mr. Fredman because the PAC, under Missouri law, cannot make any additional lawful contributions to Mr. Fredman's candidate committee.

29. Shock believes that he can raise substantial sums if the PAC receives the right to contribute more than \$1075, and he will try to raise more money if the contribution limit is held unconstitutional.

SHRINK MISSOURI GOVERNMENT PAC

By: /s/ _____
W. BEVIS SCHOCK
Treasurer

[Dated April 13, 1998; Jurat Omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

[Caption Omitted]

AFFIDAVIT OF SENATOR WAYNE GOODE

I, Wayne Goode, being duly sworn, state the following, which is based upon my personal knowledge and belief:

1. I am over the age of 18 years and competent to make this affidavit.
2. The statements made herein are made on my personal knowledge. If called upon, I am competent to testify as to the matters stated herein.
3. I was first elected to the Missouri House of Representatives in 1962, and I served in the Missouri House until 1984.
4. I was elected to the Missouri Senate in 1984, and I have served as a state senator since that date.
5. In 1993, I was co-chair of the Interim Joint Committee on Campaign Finance Reform.
6. The campaign contribution limits proposed in SB 650, now codified at § 130.032.1 RSMo., were the work product of the Interim Joint Committee. A broad spectrum of opinions were heard on the issue of campaign contribution limits. The members of the Committee discussed among ourselves at length not only what it cost to run a campaign and deliver a message to the populace, but also at what point is there the potential for contributions to become unduly influential.

7. My views on running an effective campaign come from my own experience of raising money and running campaigns for state legislative races for the last thirty-six years. Most of the other senators and representatives on the Committee had similar experiences of numerous campaigns over the years.

8. The Committee heard testimony on and discussed the significant issue of balancing the need for campaign contributions versus the potential for buying influence. Balancing these two concerns, the Committee reached the contribution limits of \$1000, 500, and \$250 by consensus.

9. I believed in 1993 and I believe today that contributions over those limits have the appearance of buying votes as well as the real potential to buy votes. The greater the contribution, the greater potential there is for the appearance of and the actual buying of votes. It was the consensus of the Committee, and I concurred, that the limits we set forth in the bill balanced the need to run an effective campaign with the appearance of buying votes.

10. I believe that the experience in the three elections since the law was enacted have demonstrated that the limits are sufficient to run an effective campaign and for a candidate to get his or her message heard.

11. I believe that the experience in the last three elections has also shown that the appearance of corruption because of campaign contributions has decreased in state elections. Imposing limits prevents the disproportionate funding of a particular campaign and, therefore, prevents the potential for buying influence.

Further affiant saith naught.

/s/ _____
WAYNE GOODE

[Dated April 20, 1998; Jurat Omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Caption Omitted

AFFIDAVIT OF JOHN W. MAUPIN

I, John W. Maupin, being duly sworn, state the following, which is based upon my personal knowledge and belief:

1. I am over the age of 18 years and competent to make this affidavit.
2. The statements made herein are made on my personal knowledge. If called upon, I am competent to testify as to the matters stated herein.
3. I was appointed to the Missouri Campaign Finance Review Board, the predecessor to the Missouri Ethics Commission, by Governor John Ashcroft, and I served on the Board from August 23, 1991 through December 31, 1992. On May 6, 1993, I was appointed by Governor Mel Carnahan to the Missouri Ethics Commission, on which I served until March 15, 1996. I served as the Chairman of the Commission from March 15, 1994 through March 15, 1996.
4. I believe that the three tier approach and their respective limits for campaign contribution limits are reasonable to run a campaign at the various levels. Missouri needed the campaign contribution limits to counter the blatant cynicism among the populace that the large contributions by a few contributors curried favor with Missouri elected officials.

5. Since the enactment of § 130.032.1 RSMo., the perception of corruption in our government has definitely improved as a result of the campaign contribution limits.

6. The campaign contribution limits are in the state's and the people's interest to make sure that people in Missouri realize that the government is not for sale. Nobody in the public would believe that you could curry political favor for \$1000, 500, and \$250, at the respective levels of government.

Further affiant saith naught.

/s/

JOHN W. MAUPIN

[Dated April 17, 1998; Jurat Omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 98-2351 EMSL

SHRINK MISSOURI GOVERNMENT PAC

and ZEV DAVID FREDMAN,

Appellants,

v.

RICHARD ADAMS, *et al.*,

Appellees.

AFFIDAVIT

My name is W. Bevis Schock and I am the Treasurer of Shrink Missouri Government PAC. I hereby verify and affirm that, under penalty of perjury the following is a true and accurate statement.

1. Shrink Missouri Government PAC is a Missouri Political Action Committee duly registered with the Missouri Ethics Commission and in good standing.
2. I am the treasurer of Shrink Missouri Government PAC.
3. Since the order of the United States Court of Appeals for the 8th Circuit, July 23, 1998, in case number 98-2351, *Shrink Missouri Government PAC, et al. v. Richard Adams, et al.* I have been actively raising funds for two candidates, Zed Fredman, seeking the Republican nomination for State Auditor, and Alexander Hasler, Republican, unopposed in the

primary, challenging Joan Bray, also unopposed in the primary, for the state representative seat for the 84th District.

4. I have two checks in hand, one from:

Larry Bradford	\$200.00
30 Leno Pl.	
St. Louis, MO 63108	

George Schoedinger, III, M.D.	\$275.00
6 Babler Lane	
St. Louis, MO 63124	

Richard F. Huck, III	100.00
5 Glenmary Rd.	
St. Louis, MO 63132	
5. Since the ruling the PAC has made contributions to Fredman in the amount of \$100.00 and Hasler in the amount of \$325.00.
6. Since July 23, 1998 I have been actively making phone calls and personal contacts in an attempt to raise more money to make more contributions.
7. I expect to raise more money and to contribute another \$225.00 to Hasler and substantially more to Fredman.
8. I do not know how much I will ultimately be able to raise for Fredman, but hope to raise funds in the range of \$5000.00. (This attempt will be made more difficult because of the proximity of the election and the recency of the court order nullifying the contribution limits).
9. Shrink Missouri Government PAC will have after the deposit and clearing of checks, a bank balance of less than \$200.00.

I hereby verify and affirm that I have read and understood this document. I declare under oath and under

penalty of perjury that to the best of my knowledge all the statements in the document are true and correct.

/s/ _____

W. BEVIS SCHOCK
Treasurer
Shrink Missouri Government PAC

[Jurat Omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

AFFIDAVIT

My name is Alexander Hasler. I hereby verify and affirm the following:

1. I am a registered voter residing at 1409 Claytonia Terrace, Richmond Heights, St. Louis County, Missouri.
2. On or about February 24, 1998 I filed as a candidate for the 1998 Republican nomination for Missouri State Representative for the 84th District.
3. I have a properly formed campaign committee: "Citizens to Elect Hasler for State Representative."
4. I am the Treasurer of my campaign committee.
5. No other candidates have filed in the Republican primary for the 84th District.
6. The primary election is on August 4, 1998.
7. Joan Bray is the incumbent in the 84th District. She is a Democrat and is running unopposed in the primary.
8. On July 25, 1998 my committee has a campaign contribution for the primary election from Shrink Missouri Government PAC in the amount of \$275.00.
9. Pursuant to the order of the United States Court of Appeals for the 8th Circuit, July 23, 1998, in case number 98-2351, *Shrink Missouri Government PAC, et al. v. Richard Adams, et al.*, on July 25, 1998 my committee accepted a 2nd campaign contribution

for the primary election from Shrink Missouri Government PAC in the amount of \$50.00.

10. W. Bevis Schock, as Treasurer of Shrink Missouri Government PAC, has offered to contribute another \$225.00 for the primary election, but the offer is contingent upon him raising the further funds.
11. Assuming Shrink Missouri Government PAC follows through on its offer, my committee will accept the additional \$225.00 contribution.
12. W. Bevis Schock, as Treasurer of Shrink Missouri Government PAC, has also offered to made a contribution of \$275.00 after August 4, 1998 for the general election.
13. I expect to accept that contribution.
14. W. Bevis Schock, as Treasurer of Shrink Missouri Government PAC, has offered to contribute (after August 4, 1998) another \$100.00 for the general election (in addition to the \$275.00 mentioned above for the general election).
15. Barring a court order changing the substance of the July 23 court order, my committee will accept those funds.
16. In 1996 I ran unsuccessfully in the Republican primary for the United States Congress for the 1st Congressional District.
17. For the last five years I have been active in Republican party affairs. Particularly, I have participated in the St. Louis County Young Republicans, the St. Louis County Pachyderms, and the Republican Liberty Caucus.

18. My general election campaign against Joan Bray will be vigorous and hard fought. We expect to clash on such issues of (from my perspective):
 - a) Campaign finance reform responsive to the 1st Amendment.
 - b) School choice with local parental control, and
 - c) Lower Taxes and the need to reduce government size before solving social ills through government action.
19. Joan Bray has a vast and statewide network of political supporters and contributors. There is reason to expect that she will be well financed and well able to present to the public her view of the above issues, and/or other issues.
20. In order to mount an effective campaign and match her promulgation of her ideas, I need substantial campaign funds.
21. My ability to accept sums larger than \$275.0 per contributor per election helps my ability to raise those funds and participate in the political debate.
22. Therefore, the court order of July 23 nullifying Missouri's limits on campaign contributions has increased the political dialogue on the issues in the campaign for the State Representative seat for the 84th District.

/s/

ALEXANDER HASLER

Date 7/26/98

[Jurat Omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

AFFIDAVIT

My name is W. Bevis Scheck and I am the Treasurer of Shrink Missouri Government PAC. I hereby verify and affirm that, under penalty of perjury, the following is a true and accurate statement:

1. Shrink Missouri Government PAC is a Missouri Political Action Committee duly registered with the Missouri Ethics Commission and in good standing.
2. I am the treasurer of Shrink Missouri Government PAC.
3. I wrote an affidavit on Saturday, July 25, 1998 describing the fund raising activities I had undertaken between Thursday, July 23, 1998, the date of the order of the United States Court of Appeals for the 8th Circuit in case number 98-2351, *Shrink Missouri Government PAC, et al. v. Richard Adams, et al.* and Saturday, July 25, 1998.
4. This affidavit is an update to that affidavit, and describes the fund raising activities in which I engaged after Saturday, July 25, 1998.
5. After the decision of the Court of Appeals I decided to focus on the campaign of Zev Fredman instead of the campaign of Alex Hasler.
6. Mr. Fredman had opposition in the August 4, 1998 primary, and Mr. Hasler did not.
7. I made approximately seven contacts by phone and in person with potential donors.

8. In each case I focused on the need to promote the message of our PAC, "to shrink Missouri Government," and stated that I believed Mr. Fredman's views were consistent with that message.

9. I ended up receiving contributions from only two donors:

H. F. Langenberg	\$100.00
20 Lenox Pl.	
St. Louis MO 63108	

Bruce Schlafly, III, M.D.	\$200.00
12315 Federal	
St Louis, MO 63131	

10. I believe the lateness of my calls in terms of the date of the election hurt the efforts to raise money for Mr. Fredman.

11. I delivered a check to Mr. Fredman for \$300.00 on July 30, 1998. That contribution essentially emptied out the PAC's account in his favor.

12. I received the check from Mr. Langenberg later the same day.

13. Further, earlier that week I consulted with Mr. Fredman regarding two other donations he expected to receive from leads generated by him. He expected the contributions to total \$750.00.

14. We decided that we would ask his donors to make their checks payable to Shrink Missouri Government Pac instead of to Fredman for Auditor.

15. We decided to proceed in this manner because Mr. Fredman and I believe that acting through our PAC, with its distinctive name, helps promote our political objective as defined by our title.

16. The PAC received those checks on July 31, 1998. They were from:

Freyda Fredman	\$250.00
4819 N. Idlewild Ct.	
Peoria, IL 61614	
David Kingsley	\$500.00

17. On July 31, 1998 I deposited those checks, plus Mr. Langenberg's check into the PAC account and simultaneously contributed \$850.00 to Mr. Fredman's campaign.

18. After the opinion of the Court of Appeals on July 23, 1998, Mr. Fredman and I had several discussions regarding the content of his radio advertising.

19. On his own counsel and on counsel from me and others, he changed the copy of his radio ads so that it would mention his role in the thus far successful the litigation to overturn contribution limits. The ads focused on Mr. Fredman's commitment to the First Amendment.

20. Mr. Fredman and I believed this issue would lead voters in Missouri to vote for him over his opponent.

21. His ads on this subject (and other subjects) ran on the day before the election.

22. Despite best efforts, Mr. Fredman lost the election.

I hereby verify and affirm that I have read and understood this document. I declare under oath and under penalty of perjury that to the best of my knowledge all the statements in the document are true and correct.

/s/

W. BEVIS SCHOCK
Treasurer
Shrink Missouri Government PAC

[Dated August 5, 1998; Jurat Omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

AFFIDAVIT OF ZEV DAVID FREDMAN

Comes now Affiant, Zev David Fredman, and states:

1. I made a good faith effort, consistent with the demands of operating my family business and under the constraints imposed by the Missouri's \$1075 limit on campaign contributions, to win the Republican nomination for the office of state auditor.
2. I am not a professional politician. As a first-time candidate for statewide political office, and I did not have either a vast network of political contacts or a well-established base of contributors. Instead, I am a private businessman. I had to continue to manage my business while I mounted my campaign for state auditor, and I did not have the time to raise the money necessary for my statewide campaign by asking a large number of contributors for small contributions. Instead, I intended to rely on contributions of more than \$1075 made by Shrink Missouri Government PAC and others, but I was precluded from employing this campaign strategy until July 23, 1998, just twelve days before the primary election when the United States Court of Appeals for the Eighth Circuit enjoined enforcement of the state campaign contribution limits.
3. With little time left before the election and no judicial relief then in sight, I decided on July 23, 1998 to run a commercial on the Missouri Network in order to obtain statewide coverage. As I was traveling to record my campaign statement, I received a telephone call from counsel

and learned that the court of appeals had enjoined enforcement of the contribution limits.

4. After entry of the injunction pending appeal, I made my best possible efforts to raise large contributions necessary to finance the presentation of my political views to the electorate. I called many potential donors, but I had little success. I believe that I was not successful because many donors, at this late stage, had already decided to support my opponent Charles Pierce and because at least some of these donors were concerned about public statements that called into question the effectiveness of this Court's July 23, 1998 Order as a shield against enforcement of the state contribution limits.

5. I ultimately raised a total of \$4750 (Exhibit 1) and spent a total of \$3936 (Exhibit 2).

6. Portions of my basic campaign statement (Exhibit 3) were quoted in the VOTERS' GUIDE published by the St. Louis Post-Dispatch on August 2, 1998 (Exhibit 4).

7. I had two interviews on the Missouri Network: on Friday, July 31, 1998, and on Monday, August 3, 1998.

8. With the primary only a few days away and with little money, I decided that radio was the only way to get my message out. I ran one spot (Exhibit 5) two times on Friday, July 31, 1998 on the Missouri Network (stations throughout the state) and then again three times on Monday, August 3, 1998 on the same stations.

9. My best potential buys, Rush Limbaugh on KMOX-St. Louis and KMBZ-Kansas City, were closed out to my campaign because those two stations were not taking any political advertising beyond the requirements imposed by federal law for federal candidates. I obtained a listing of

Rush Limbaugh's stations throughout the State, and I bought time on the following stations to run a second spot (Exhibit 6) on Monday, August 3, 1998:

- a. WDAF, Kansas City, 10 thirty second spots during the morning drive. WDAF is a country station that runs "news only" in the morning, and I believe that it has a conservative audience.
- b. KWTO, Springfield, 9 thirty second spots during the Rush Limbaugh and Dr. Laura programs and during a popular "sports talk" show.
- c. KFRU, Columbia, 8 thirty second spots during the day and including the Rush Limbaugh program.
- d. KFEQ, St. Joseph, 9 thirty second spots during the Rush Limbaugh program and on morning drive.
- e. KQYZ, Joplin, 9 thirty second spots during the Rush Limbaugh, Dr. Laura, and Ollie North Shows.
- f. KWOS, Jefferson City, 12 thirty second spots during the Rush Limbaugh and Dr. Laura programs.
- g. KZIM, Cape Girardeau, 4 thirty second spots on Rush Limbaugh on August 3, 1998, and four more on August 4, 1998.
- 10. I concentrated my expenditures for the second spot on Kansas City because my first spot on the Missouri Network reached the whole state (including KTRS in St. Louis) except for Kansas City, and I decided that Kansas City needed some extra time on my second buy.
- 11. Although I lost the Republican primary election for state auditor, I had the support of approximately twenty percent of the voters and received over 40,000 votes. But for the campaign contribution limits, which burdened my campaign efforts until just twelve days before the elec-

tion, I believe that I could have done substantially better, and perhaps even won the nomination.

/s/ _____

ZEV DAVID FREDMAN
Affiant

[Dated August 5, 1998; Jurat Omitted]